



Economic Impact Analysis Virginia Department of Planning and Budget

2 VAC 20-51 – Regulations Governing Pesticide Applicator Certification Under Authority of Virginia Pesticide Control Act

Department of Agricultural and Consumer Services

March 12, 2007

Summary of the Proposed Regulation

The Virginia Pesticide Control Board (Board) proposes to amend the existing Regulations Governing Pesticide Applicator Certification Under Authority of Virginia Pesticide Control Act. Specifically, the Board proposes to (1) eliminate the provision allowing businesses or agencies to proctor the registered technician examination to their own employees, (2) establish minimum training requirements for registered technicians seeking to work in pesticide application categories or subcategories that are different from the category in which they received their original training, (3) require that a record be maintained for all pesticides applied (not just restricted use pesticides) by commercial applicators not for hire and registered technicians not for hire,¹ (4) specify that direct on-site supervision requires a certified applicator's constant visual contact with the individuals under supervision, (5) establish a time frame within which a person would have to finish training and take the registered technician examination, and (6) add a category of "miscellaneous" for commercial applicator certification.

¹ Commercial applicator not for hire and registered technicians not for hire refer to those that use or supervise the use of pesticides as part of his job duties only on property owned or leased by him or his employer. It also applies to governmental employees who use or supervise the use of pesticides, whether on property owned or leased by them or their employers or not, in the performance of their official duties.

Results of Analysis

There is insufficient data to accurately compare the magnitude of the benefits versus the costs. Detailed analysis of the benefits and costs can be found in the next section.

Estimated Economic Impact

Under the existing regulation, certified commercial applicators may be authorized by the Virginia Department of Agriculture and Consumer Services (VDACS) to proctor registered technician examinations. Authorized proctors may administer and grade the examination and shall notify VDACS of the grade received by the applicants. The Board proposes to eliminate the provision allowing certified commercial applicators to administer and grade registered technician examinations. All applicants for registered technician certification will be required to take the examination at the Department of Motor Vehicle (DMV) Customer Service Centers or other authorized VDACS testing sites.

According to VDACS, the proctorship provision was introduced in response to industry complaints about the length of time it took to get certified. Prior to this provision, applicants for registered technician certification were required to take the test at a limited number of locations during certain days of each month. The average length of time to get certified was 22 days. The introduction of the proctorship system and the administrative changes made to the certification system by VDACS² reduced the average waiting period to 12 days. In 1999, VDACS began administering the examination through DMV. The examination can be taken at any DMV Customer Service Centers across the state and at any time during regular office hours. According to VDACS, the DMV system has significantly reduced the waiting period to get certified. In some cases, individuals could get certified within 3 days of submitting their applications.

VDACS estimates that the proposed elimination of the proctorship provision would add one hour of travel and processing time to the testing time for applicants who would have opted for a proctored exam. In the year of 2006, 1,022 applicants for registered technician certification chose to take the examination under the proctorship system and 1,331 chose to take it under the DMV system. Assuming that approximately 1,000 applicants would have chosen to take an exam

² For example, the use of fax to report exam results.

administered by their employers every year and with an estimated cost of \$10 per hour, the proposed change will likely result in a total cost of \$10,000.

The proposed regulation may impose an additional cost of \$2,000 per year for the state to administer registered technician exams through DMV.³ However, this cost will likely be offset by savings from not having to process the 1,000 paper test forms submitted by proctors or administer the proctorship system.

The proposed elimination of the proctorship system will ensure that only qualified individuals get certified and apply pesticides on citizen's property, which will better protect public health and the environment. According to VDACS, the pass rate for the registered technician examinations in 2003 was 61% under the DMV system and 95% under the proctorship system. Given that the DMV system is likely to be fair and is likely to provide accurate results, the significantly higher pass rate under the proctorship system indicates that there might be possibilities that unqualified individuals get certified through an exam administered by their employers, even allowing for differences in ability. The proposed elimination of the proctor system will likely provide benefit by reducing the risk to public health and the environment.

The proposed regulation will establish minimum standards for on-the-job training for registered technicians seeking to work in any application category or subcategory that is different from the category in which they received their original training. Currently there are no training requirements for registered technicians who shift to categories of pesticide application in which they have no prior training. The proposed change requires that, before registered technicians begin working in any application category or subcategory that is different from the category in which they received their original training, they shall receive additional training from a commercial applicator on: 1) pesticides to be used, including reading and understanding the label, 2) application equipment and techniques, 3) pests to be controlled, 4) personal protective equipment and clothing, and 5) environmental concerns, including storage and disposal of pesticides applied. The commercial applicator providing training to a registered technician shall be certified in the category or subcategory for which he is providing the training and shall provide proof to VDACS of such training on forms provided by VDACS.

³ Source: VDACS.

This proposed change will ensure that applicators are aware of the unique attributes of each application category and apply the pesticide accordingly. According to VDACS, each pesticide application category has unique aspects to it. Although VDACS is not aware of any specific instances that public health or environmental problems occur when registered technicians applying pesticides in categories different from the one they received original training, the additional training requirement would reduce the potential hazards to public health and the environment. The requirement for the commercial applicators to provide and report additional training when a registered technician is shifted into another category of pesticide application is projected to cost \$150 per registered technician. VDACS estimates that no more than 600 registered technicians will apply pesticides in categories different from the one they received original training, thus the total cost from this proposed change will be as much as \$90,000 per year. The proposed change will also impose an additional cost of \$115 per year to VDACS for processing up to 600 single-page forms.

The proposed regulation requires that commercial applicators not for hire and registered technicians applicators not for hire shall maintain a record of each pesticide applied, both restricted use pesticide and general use pesticide. Under the existing regulations, records are required only for the use of restricted use pesticides by the commercial applicators not for hire (registered technician not for hire are not allowed to apply restricted use pesticides). The additional record-keeping requirement will assist VDACS in investigating complaints of misuse of pesticides and make it easier to determine whether the pesticides were applied in accordance with regulations. There have been instances when the inappropriate application of even general use pesticides has created a public health hazard. For example, two individuals died in 1986 following fumigation with a general use pesticide. Thus, to the extent that this proposed change allows for better enforcement of existing regulations, it is likely to produce some economic benefits.

According to VDACS, since applicators not for hire make applications only to their employer's property, the number of applications and thus the number of records they need to maintain is not large. Also, many businesses have been maintaining the records of general use pesticides as their regular business practice. Therefore, this proposed change will likely impose a small amount of cost to the commercial applicators not for hire and registered technicians not for hire. VDACS estimates that this proposed change will affect no more than 260 applicators not

for hire. Assuming that 50 applications are made per year by each applicator not for hire and each record costs \$0.17, the total estimated cost imposed by this proposed change will be \$2,210 per year.⁴

The proposed regulation clarifies that direct on-site supervision requires a certified applicator's constant visual contact with the individuals under supervision.⁵ The current definition of direct on-site supervision only requires that a certified applicator be physically present on the property where the pesticides are being applied. VDACS believes that trainees and uncertified individuals should be visually monitored while applying pesticides. To the extent that closer monitoring could reduce the instances of inappropriate pesticide applications and improve on-the-job training to individuals seeking certification as registered technician, this proposed clarification will better protect the public health and the environment. Some businesses may have to increase the number of hours worked by certified applicators or increase the ratio of certified applicators to uncertified applicators, which may create additional economic cost for these businesses.

The proposed regulation requires that individuals hired or transferred into a position that involves the commercial use of pesticides must take the registered technician examination within 90 days of employment or transfer. The existing regulation states that individuals are to take the examination within 90 days of submitting the application and paying the fee. According to VDACS, the proposed change is intended to ensure that individuals seeking certification as registered technicians get certified within a reasonable amount of time. Under the existing regulations, the 90-day limit comes into effect only after the individual has submitted the application and paid the fees. Some individuals may take advantage of the current language and may be applying pesticides as trainees for a long time without the intent to get certified. By instituting a 90-day limit from the time an individual takes up a position involving the commercial use of pesticides, the Board intends to prevent individuals from operating as "perpetual trainees" and ensure that they get certified within a reasonable amount of time.

However, the proposed regulation does not require that an individual who fails the first or previous examinations has to take the next registered technician examination within a reasonable

⁴ Calculation: $\$0.17 * 50 * 260 = \$2,210$.

⁵ Individuals seeking certification as registered technicians must receive on-the-job training in the proper application of pesticides under the direct on-site supervision of a certified commercial applicator for at least 20 hours during the six-month period prior to applying for certification in addition to other requirements.

period of time.⁶ There exists the possibility that an individual who fails the first examination continues to apply pesticides without the intent of taking further examinations to get certified. VDACS has agreed to suggest that the Board make appropriate changes at the final stage to minimize this possibility.

The proposed regulation establishes an additional category of “miscellaneous” for commercial applicator certification. According to VDACS, this proposed change is intended to allow for certification of applicators using pesticides that are newly classified as restricted use by the U.S. Environmental Protection Agency (EPA) but not covered by the current certification regulations. Currently VDACS certifies applicators in the use of new restricted use pesticides under one of the existing application categories. The proposed change will make the categories for commercial applicator certification accurately reflect the type of pesticide application without imposing any significant adverse impact.

The Board also proposes several changes to make the regulation consistent with the Virginia Pesticide Control Act. For example, commercial pesticide applicators not-for-hire will be required to be certified when using pesticides in areas open to the public at daycare facilities (together with educational institutions, health care facilities, and convalescent facilities). Certification under the category of “marine antifoulant paints” will be required only when a commercial applicator uses or supervise the use of a marine antifoulant paint containing restricted use pesticides. These changes will improve the understanding and implementation of the regulation without any adverse impact.

Businesses and Entities Affected

The proposed regulation will affect businesses and individuals involved in pesticide application. According to VDACS, there are approximately 2,100 businesses licensed to apply pesticides. As of September 2006, there are 7,162 commercial applicators and 5,908 registered technicians operating in Virginia, including 1,955 commercial applicators not for hire and 2,534

⁶ The proposed regulation states that applicants who do not pass the examination on their first attempt are eligible to be reexamined 10 days from the date of the first examination, with a new certification fee paid. If they fail on the second or subsequent attempts, they must wait 30 days from the date of last examination, with a new certification fee paid.

registered technicians not for hire.⁷ Approximately 1,000 individuals will have to take the registered technician examination under the DMV system every year who would have taken the examination under the proctor system. Currently there are 265 commercial applicators authorized to proctor registered technician examination for their employees.

Localities Particularly Affected

The proposed regulation applies to all localities in the Commonwealth.

Projected Impact on Employment

Some of the proposed changes, such as the record-keeping requirement of general use pesticides and the additional training requirement for registered technicians applying pesticides in a category different from the one in which they received their original training, will likely increase costs for the pesticide businesses and reduce their profit, which may have a small negative impact on their employment. The requirement that direct on-site supervision entails a certified applicator's constant visual contact with the individuals under supervision may force some businesses to increase the number of hours worked by certified applicators or increase the ratio of certified applicators to uncertified applicators. The 90-day limit upon which an individual applying pesticides has to take the registered technician examination will likely reduce the number of uncertified employees and seasonal employees.

Effects on the Use and Value of Private Property

The proposed regulation will ensure that pesticides are applied properly by qualified individuals and will reduce the potential hazards to public health and the environment, which may have a positive impact on the value of residential properties near where pesticides are applied. On the other hand, most of the proposed changes, such as the record-keeping requirement of general use pesticides, the additional training requirement for registered technicians working in different categories or subcategories, the clarification of direct on-site supervision as involving a certified applicator's constant visual contact, and the 90-day limit for registered technician examination, will likely increase the cost for the pesticide businesses and reduce their profit, which may have a small negative impact on their asset value.

⁷ The number of commercial applicators not for hire and registered technicians not for hire includes government employees.

Small Businesses: Costs and Other Effects

The record-keeping requirement of general use pesticides and the additional training requirement for registered technicians working in different categories or subcategories will likely increase the cost for the small businesses and reduce their profit. The clarification that direct on-site supervision requires constant visual contact may cause some small businesses to increase the number of hours worked by certified applicators or increase the ratio of certified applicators to uncertified applicators. Small businesses can no longer hire uncertified employees or seasonal employees for a long time under the revised time frame for taking registered technician examination, which may increase their costs. According to VDACS, all of the pesticide businesses being affected are small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact

The proposed regulations will ensure that pesticides are applied properly by qualified individuals and will reduce the potential hazards to public health and the environment. There are no other alternatives that can achieve the same result with less adverse impact.

Legal Mandate

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007.H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a

description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.